

REMARKS

In response to the Office Action dated July 16, 2008, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the following comments. By way of summary, Claims 18-28, 73, 74, and 76-85 were pending. Claims 18, 73, and 82 have been amended. Claims 19 and 74 have been canceled, without prejudice or disclaimer. Accordingly, Claims 18, 20-28, 73, and 76-85 remain pending for consideration.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~ or enclosure in [[double brackets]], and additions are underlined.

Claims 18, 20-28, 73, and 76-85 Are In Condition for Allowance

Claims 18, 20-28, 73, and 76-85 presently stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ekholmer (US 4,717,379). While Applicants believe that all pending claims are patentable in their prior form, certain claims have been amended in an effort to expedite allowance of the application.

Claims 18, 73, and 76 recite, *inter alia*, a catheter comprising a porous membrane wrapped around a support. In clear contrast, Ekholmer discloses a non-porous tube 6 that includes a section having exit holes 4 passing therethrough. The Examiner has taken the position that the distal portion of tube 6 satisfies the limitation of a porous membrane, citing the following definition of porous: "something that has many small holes, so liquid or air can pass through." Applicants submit that the definition offered by the Examiner is unreasonably broad and is inconsistent with the present specification. *See*, M.P.E.P. § 2111 of the M.P.E.P. (Claims "must be given their broadest possible interpretation consistent with the specification.") In addition, the Examiner appears to have ignored language in the claims that the porous membrane becomes "saturated" with fluid. Applicants submit that the tube of Ekholmer is not capable of becoming saturated with fluid.

As amended claims 18, 73, and 76 also recite that fluid entering a proximal end of the catheter *first* flows toward a distal end of the catheter, saturates the porous membrane along its entire length, and *then* exits the catheter through the porous membrane at a rate that is substantially uniform along the entire length of the porous membrane. Ekholmer does not disclose or render obvious such a limitation. In clear contrast, one of skill in the art would

appreciate that fluid introduced into the proximal end of the catheter of Ekholmer would first exit the more proximal holes. Thus, the pressure and amount of fluid exiting through the holes would not be uniform, i.e. it would tend to decrease over the length of the infusion section. Indeed, Applicants note that the disclosure of Ekholmer contains no recognition of the problem of providing for more uniform fluid delivery. Instead, Ekholmer is concerned with providing non-communicating passages, wherein certain passages can be used for supplying a washing agent, while others can be used to drain the washing agent and possible secretions from the body cavity. *See*, col. 1, ll. 29-33.

Applicants also submit that it would not have been obvious to substitute the hole-containing tube of Ekholmer with the porous membrane of the present invention at least because doing so would impermissibly change the principle of operation. *See* M.P.E.P. § 2143.01 (“if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teaching of the references are not sufficient to render the claims *prima facie* obvious”). One non-limiting embodiment of the presently-claimed catheter can be described with reference to Figures 1-4 of the specification. Fluid in catheter 20 enters the infusion section by flowing through lumens 38. Fluid enters the infusion section and “soaks into the porous membrane 26.” As more fluid enters the infusion section, it *diffuses longitudinally within the membrane 26 until the entire membrane 26 and infusion section are saturated with fluid*. At this point, the fluid 36 begins to pass through the membrane 26, thereby exiting the catheter 20 and entering the anatomy.” Thus, the “principle of operation” involved in the claimed invention relates to the molecular cohesion/ adhesion of fluid within the porous membrane. This principle enables fluid flowing in the catheter to *first* saturate the porous membrane and to *then* exit the catheter at a rate that is substantially uniform along the length of the infusion section. In clear contrast, Ekholmer suggests no such principle. As described above, fluid entering the infusion section of the catheter of Ekholmer will first exit through the more proximal holes, resulting in a non-uniform flow throughout the infusion section.

Accordingly, it is submitted that Claims 18, 73, and 82 are in condition for allowance. Claims 20-28, 76-81, and 83-86 are allowable, not only because they depend from one of allowable Claims 18, 73, and 82, but upon their own merit as well.

Application No.: 10/031,913
Filing Date: May 21, 2002

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Application No.: 10/031,913
Filing Date: May 21, 2002

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 14, 2008

By: 

Curtiss C. Dosier
Registration No. 46,670
Attorney of Record
Customer No. 20,995
(949) 760-0404

6064276
100908